

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

PB LIFE AND ANNUITY CO., LTD. AND  
RACHELLE FRISBY AND JOHN JOHNSTON,  
AS JOINT PROVISIONAL LIQUIDATORS,

Debtor.

Case No. 20-12791-lgb  
New York, New York  
June 24, 2021  
10:16 a.m. - 11:38 a.m.

20-12791-SCC, PB LIFE AND ANNUITY CO., LTD. AND  
RACHELLE FRISBY AND JOHN JOHNSTON, AS JOINT PROVIS

- CHAPTER 15 -

MOTION TO COMPEL 1. MOTION FOR A FURTHER ORDER COMPELLING  
TURNOVER OF BOOKS AND RECORDS AND ATTORNEY FILES PURSUANT TO 11  
U.S.C. 105, 542, 1519(A)(3), 1521(A)(4) & 1521(A)(7)

BEFORE THE HONORABLE LISA G BECKERMAN  
UNITED STATES BANKRUPTCY JUDGE

- A P P E A R A N C E S -

For the Joint Provisional Liquidators and Foreign Representatives, Rachelle Frisby and John Johnston: MARTHINUS DREYER  
Deloitte Ltd.  
Corner House, 20 Parliament Street  
Hamilton, HM 12 Bermuda  
(441) 299-1345; (441) 292-0961 fax  
marthinus.dreyer@deloitte.com

For the Joint Provisional Liquidators and Foreign Representatives, Rachelle Frisby and John Johnston: NICOLAS KAJON, ESQ.  
CONSTANTINE DEAN POURAKIS, ESQ.  
ANDREAS D. MILLIARESSIS, ESQ.  
ERIC ROBINSON, ESQ.  
Stevens & Lee  
485 Madison Avenue, 20<sup>th</sup> Floor  
New York, New York 10022  
(212) 319-8500; (212) 319-8505 fax

For Lindberg & Global Growth: JARED PACE, ESQ.  
SETH MOORE, ESQ.  
Condon Tobin Sladek Thornton  
Nerenberg PLLC  
8080 Park Lane, Suite 700  
Dallas, Texas 75231  
(214) 265-3800; (214) 691-6311 fax

For Colorado Bankers Life Insurance Company, Bankers Life Insurance Company, Southland National Insurance Corporation, and Southland National Reinsurance Corporation: NORMAN KINEL, ESQ.  
Squire Patton Boggs  
1211 Avenue of the Americas, 26<sup>th</sup> Fl  
New York, New York 10036  
(212) 407-0130; (212) 872-9815 fax  
norman.kinel@squirepb.com

For Universal Life Insurance: (listen only) MEGHAN DALTON, ESQ.  
CLINTON CAMERON, ESQ.  
Clyde & Co LLP  
55 West Monroe Street  
Chicago, Illinois 60603  
(312) 635-7000; 312-635-6950 fax

(Proceedings recorded by electronic sound recording)

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1 THE COURT: I think that takes us next to 20-12791, PB  
2 Life and Annuity Co., Ltd. I believe that today's matter is a  
3 motion to compel for further order compelling turnover of books  
4 and records and attorney files pursuant to 11 U.S.C. §§ 105,  
5 542, 1519(a)(3), 1521(a)(4) & 1521(a)(7). May I have  
6 appearances of counsel, please?

7 MR. KAJON: Good morning, Your Honor, Nicolas F. Kajon  
8 of Stevens & Lee, representing Rachelle Frisby and John  
9 Johnston, the joint provisional liquidators or PBLA, Northstar,  
10 and Omnia. With me in court today are my partners, Constantine  
11 Pourakis, and Eric Robinson, and my associate, Andreas  
12 Milliaressis. Also, appearing today on behalf of the JPLs is  
13 Marthinus Dreyer from Deloitte.

14 THE COURT: Okay.

15 MR. MOORE: Good morning, Your Honor, Seth Moore, of  
16 the law firm, Condon Tobin Sladek Thornton Nerenberg, on behalf  
17 of Greg Lindberg and Global Growth Holdings, Inc. And also, on  
18 the phone is from my firm today is my partner, Jared Pace.

19 THE COURT: Okay. Any additional apperaances of  
20 counsel?

21 MR. KINEL: Good morning, Your Honor, this is Norman  
22 Kinel of Squire Patton Boggs. I represent Colorado Bankers Life  
23 Insurance Company, Bankers Life Insurance Company, Southland  
24 National Insurance Corporation, and Southland National  
25 Reinsurance Corporation.

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1 THE COURT: Okay. Any additional appearances of  
2 counsel?

3 (No response.)

4 THE COURT: Okay. Counsel for the JPLs, I believe the  
5 floor is yours. It's your motion, so please go ahead and  
6 present your motion.

7 MR. KAJON: Thank you, Your Honor. This is Mr. Kajon  
8 again. Your Honor, it is astounding and frankly, disconcerting  
9 that nine months after the appointment of the JPLs and five  
10 months after entry of this court's turnover order, the JPLs  
11 still do not have complete books and records for the debtors.  
12 In fact, the JPLs are missing most of the critical documents  
13 that they require to administer the debtor's assets, which  
14 consists of over 130 investments in closely held companies, most  
15 of which are controlled by Greg Lindberg. The declaration of  
16 Ms. Frisby that we filed earlier this week details the types of  
17 documents that should be among the debtor's books and records  
18 and that most of these documents have not been turned over to  
19 the JPL.

20 The missing documents include financial records of the  
21 debtors, loan files, and due diligence records documenting each  
22 of the substantial loans issued by and other assets held by the  
23 debtors, financial statements, valuations and appraisals, and  
24 other documents relating to the debtor's counterparties, bank  
25 records, wire transfers, cancelled checks, intercompany

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1 transfers, or other records to determine the location of cash  
2 assets related to the debtors. A summary of document  
3 deficiencies with respect to four sample investments is provided  
4 in Exhibit 7 to Ms. Frisby's declaration.

5 Prior to the appointment of the JPLs, the debtors were  
6 owned and controlled by Greg Lindberg, and his holding company,  
7 Global Growth, who's headquarters is located in Durham, North  
8 Carolina. The evidence shows that the principal decision makers  
9 concerning the debtor's investments were Mr. Lindberg and his  
10 top lieutenant, Chris Herwig, both of whom worked out of Global  
11 Growth's North Carolina office. It boggles the mind that Global  
12 Growth and Mr. Lindberg could direct the investment of over \$1  
13 billion by the debtors and not have any records relating  
14 thereto.

15 Mr. Lindberg caused the debtors to invest over \$1  
16 billion in dozens of illiquid closely held enterprises. To do  
17 so, Mr. Lindberg and his underlings must have had access to  
18 financial statements, valuations and appraisals, organizational  
19 documents and other critical information concerning the proposed  
20 counterparties. Once these investments were made, the senior  
21 executives at Global Growth and their underlings should have  
22 received financial statements and other information from the  
23 counterparties on a regular basis so that they could monitor  
24 these investments. Therefore, it is illogical that Greg  
25 Lindberg and Global Growth never had or no longer have these

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1 records.

2 Respondents claim in their opposition that they don't  
3 have these records and that we have them. While we were 99  
4 percent certain that we did not have these records, we decided  
5 to be 100 percent certain. Attorneys at my firm and the JPL  
6 staff at Deloitte, used Relativity and/or Brainspace to screen  
7 the one million documents available to us from the hard drives  
8 and servers located in Bermuda. We submitted the declaration of  
9 Ms. Frisby and two Steven & Lee attorneys reporting on the  
10 results of these document reviews and demonstrating that in fact  
11 the JPLs do not currently have access to these documents.

12 In support of their position that they don't have  
13 these records, respondents proffered a witness, Anuj Sharma, who  
14 swore that most, if not all of the debtor's books and records  
15 listed in the turnover order are already in the JPLs possession  
16 because these documents are on the laptops and servers located  
17 in Bermuda. Yet, when I took his deposition, Mr. Sharma  
18 admitted that he had no idea what books and records were  
19 maintained by the debtors Bermuda employees. Contrary to  
20 respondents' assertions, we have ample evidence that respondents  
21 do in fact have these records.

22 First: Ms. Frisby's declaration explains that based  
23 on the JPLs' review of available documents and discussions with  
24 the debtor's Bermuda employees, it is clear that Global Growth  
25 personnel managed the debtor's investments and bank accounts,

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1 and therefore, only Global Growth has a full set of records  
2 relating thereto, not the Bermuda employees.

3 Second: Every computer obtained from the debtor's  
4 Bermuda employees required a BitLocker recovery key to unlock  
5 the individual computer and permit access to the software, data,  
6 and other contents therein. We submitted an email that  
7 demonstrates that Global Growth has these keys, yet it has  
8 failed to turn them over to the JPLs despite multiple requests.

9 Third: Respondents proffered the testimony of Mr.  
10 Sharma concerning production of records, but he confirmed that  
11 all of the information he received about the debtor's  
12 investments and loans came from Global Growth personnel in North  
13 Carolina.

14 Fourth: In a recent email exchange, Lisa Hall, the  
15 debtor's finance manager, advised that she did not have access  
16 to PBLA bank accounts. Instead, she would generate letters for  
17 Christopher Herwig, a senior executive at Global Growth, to move  
18 funds out of the PBLA bank accounts.

19 Fifth: We submitted an email demonstrating that the  
20 debtor's Bermuda employees were not aware of sales of the  
21 debtor's assets until after the fact and sought details from  
22 Global Growth.

23 Sixth: We submitted another email by a Bermuda  
24 employee seeking cash statements from Eric Bostic, then a vice  
25 president at Global Growth's offices in Durham, North Carolina.

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1 Seventh: Mr. Bostic testified that where they had  
2 third party valuations, they used those figures in the asset  
3 lists to reflect the fair market values of the debtor's assets.  
4 The asset list that we have reflect dozens of fair market  
5 values, therefore, there must be dozens of valuations, very few  
6 of which have been turned over to the JPLs.

7 Eighth: There are discrepancies between what the  
8 respondents produced in the North Carolina insurance  
9 rehabilitation action and what they produced to us. For  
10 instance, a rating agency known as HR Ratings provided ratings  
11 assessments for several multimillion-dollar loan transactions in  
12 which PBLA was a lender, which reports presumably were  
13 maintained in the ordinary course of business as part of PBLA's  
14 loan files. While numerous such reports were produced by  
15 respondents in the North Carolina action to the plaintiffs  
16 therein, only four were produced to us.

17 Ninth: Mr. Sharma testified that he coordinated  
18 document production with Eric Bostic, who, until recently, was a  
19 Global Growth Vice President in North Carolina. However, when  
20 we deposed him, Mr. Bostic testified that he did not directly  
21 interact with Mr. Sharma on this project, and that he only  
22 indirectly assisted in responding to Exhibit A of the turnover  
23 order. These and other inconsistencies cast substantial doubt  
24 on Global Growth's compliance with the turnover order.

25 Tenth: Mr. Bostic conceded that he had access to



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1 financial statements for at least some of the companies in which  
2 the debtors invested. Yet Global Growth claims not to have  
3 these financial statements.

4 Eleventh: Mr. Bostic also testified that he would  
5 assist with and provide ULICO with a quality check of the asset  
6 list for the PBLA ULICO trust assets. ULICO is PBLA's principal  
7 creditor, and it is owed in excess of \$500 million. How could  
8 Mr. Bostic do this quality check without access to records  
9 concerning the debtor's assets?

10 Twelfth: Mr. Bostic also conceded that Global Growth  
11 had organizational documents and corporate resolutions related  
12 to companies in which the debtors invested.

13 Based on the foregoing, Your Honor, there is a clear  
14 evidentiary record that the JPLs are still missing critical  
15 books and records of the debtors; that Global Growth has these  
16 records; and that it has not complied with the court's turnover  
17 order. Global Growth clearly had all of these documents. If  
18 they do not have them now, then where did these documents go?  
19 If respondent cannot explain all of these discrepancies, then we  
20 respectfully submit that we are entitled to a presumption that  
21 they are improperly withholding these documents from the JPLs.  
22 Therefore, the Lindberg entities should be directed to comply  
23 with this court's turnover order.

24 Your Honor, I'd now like to turn my attention to the  
25 spurious privilege issues raised by the respondents. Mr.

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1 Lindberg is attempting to assert the debtor's attorney-client  
2 privilege based merely on his indirect ownership of the debtors.  
3 No court has ever recognized such a right. A liquidator  
4 appointed in Bermuda similar to a trustee appointed in the  
5 United States owns and controls the privilege of the  
6 corporation. **CFTC v. Weintraub**, 471 U.S. 343 (1985), was the  
7 seminal case on that issue, Your Honor, as I'm sure Your Honor  
8 is familiar. As set forth in the declaration of Mark Diel, the  
9 JPLs' Bermuda counsel, that was filed with the court on December  
10 21, 2020, Docket Number 23, the JPLs appointment by the Bermuda  
11 Supreme Court operates to remove Mr. Lindberg from any capacity  
12 whereby he could assert the debtor's privilege or take any other  
13 action on behalf of the debtors. Mr. Diel also testified that  
14 the JPLs are entitled to all of the debtor's privileged  
15 documents pursuant to both the Bermuda orders in § 174(1) of the  
16 company's Act of 1981.

17 Prior to the appointment of the JPLs, Condon Tobin  
18 represented PBLA in litigation in New York and North Carolina.  
19 New York Rules of Professional Conduct require that upon  
20 termination of representation, a lawyer shall take steps to  
21 avoid foreseeable prejudice to the rights of the client,  
22 including delivering to the client all papers and property to  
23 which the client is entitled. New York ethics committees have  
24 relied on **Sage Realty Corp. v. Proskauer Rose Goetz &**  
25 **Mendelsohn**, 235 A.D. 2d 355 (1997), in which the Court of

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1 Appeals of New York found that client is entitled to the  
2 attorney file, including the attorney's work product. New York  
3 Ethics Opinion 766, which we cite in our motion, cited **Sage**  
4 **Realty**, and found that as a matter of ethics, upon request by a  
5 former client, such as the JPLs, a lawyer must promptly turn  
6 over or provide access to the files, which the former client is  
7 entitled to possess.

8 The North Carolina Rules of Professional Conduct,  
9 which we cite in our motion, imposes similar ethical  
10 requirements as New York. In sum, pursuant to the turnover  
11 order, United States and Bermuda statutory authority, and the  
12 Bermuda orders, the JPLs are entitled to immediate possession of  
13 the debtor's books and records and all the debtor's files held  
14 and maintained by the law firms.

15 Mr Lindberg is certainly free to assert privilege  
16 based on communications resulting in legal advice personally  
17 provided to him in his individual capacity, i.e., not as an  
18 officer, director, manager, or in some other official capacity  
19 acting for the debtors. The JPLs, however, are currently, only  
20 seeking the debtor's documents, not Mr. Lindberg's personal  
21 documents. So, his personal privilege is not an issue before  
22 you today.

23 Respondent's reliance on the **BCE West** case is  
24 misplaced. In **BCE West**, the plan trustee issued a subpoena  
25 seeking documents relating to a law firm's representation of a

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1 special committee of a board of directions of the debtors.  
2 "Special Committee" is an entity wholly separate from the  
3 debtors themselves. Here the JPLs are seeking turnover of the  
4 debtor's own records to which the JPLs are clearly entitled. In  
5 the **China Med** case, which we cite in our papers, the district  
6 court found that even where a Cayman Islands liquidator sought  
7 documents between the debtor's audit committee and counsel, the  
8 attorney-client privilege passed to the liquidator. But we're  
9 not asking Your Honor to go that far, we're simply seeking the  
10 debtor's privileged documents. Because the JPLs control the  
11 debtor's privilege. The court need not concern itself with a  
12 detailed analysis of Lindberg's assertions of privilege with  
13 respect to each of the 2000 which they claim are privilege.

14 While the privilege logs produced by the Lindberg  
15 entities and law firms are woefully deficient, they're simply a  
16 red herring designed to bog JPLs down in months of litigation  
17 over each and every document, and thereby, further impede the  
18 JPLs in the performance of their duties just like they are doing  
19 now by wrongfully withholding the debtor's books and records.  
20 The simple fact remains that Mr. Lindberg has no right to assert  
21 any privilege with respect to any of the debtor's files. Every  
22 document identified in the privilege log is marked as protected  
23 under both attorney-client privilege and the work product  
24 doctrine. Importantly, Condon Tobin has not, and likely cannot  
25 assert that these documents were actually prepared in

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1 anticipation of litigation and should be protected from the JPLs  
2 since all of the pending litigation is not the JPLs to  
3 administer. If Condon Tobin were to assert that these documents  
4 were prepared in anticipation of litigation, it would be for  
5 litigation that since September 2020 only the JPLs have the  
6 right to bring or defend on behalf of the debtors.

7 The district court in Martin v. Valle National Bank of  
8 Arizona, which we cite in our papers, determined that the work  
9 product privilege does not allow an attorney to withhold  
10 documents from his own client, which here are the JPLs. Based  
11 on the foregoing, the court should reject these specious claims  
12 of privilege and order respondents to turn over all previously  
13 withheld documents. Thank you, Your Honor.

14 THE COURT: Okay. Mr. Kajon, before I hear the  
15 response, I just have a couple of questions for you. First, are  
16 the JPLs, waiving attorney-client privilege on the record today?

17 MR. KAJON: No, Your Honor, there's no reason to waive  
18 the privilege today. My clients own the privilege and,  
19 therefore, they're entitled to documents that are subject to the  
20 debtor's corporate privilege.

21 THE COURT: Okay. It's hard to tell from the  
22 documents, Mr. Kajon, so I'll ask you this. I'm going to  
23 obviously ask the respondents the same question, but have there  
24 been any assertions in the context of the discovery process of  
25 multiple entity issues? Listening to your presentation and

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1 having read the papers myself, one thing I was questioning is  
2 whether or not there was an issue that you had documents that  
3 were subject to two entities' privileges. For example, a  
4 debtor's entity of privilege and the other party? And I'll use  
5 as an example here, perhaps, Global Growth if there were  
6 intercompany related documents. And as you know, when you have  
7 two privileges that are asserted or two parties who have  
8 documents, sometimes it takes a little while to work through  
9 those issues. So, I was wondering if that had been part of the  
10 problem. It didn't seem from the papers that it had, but it's  
11 certainly something from your description about how documents  
12 were kept in North Carolina that I could see being a problem  
13 with debtor/non-debtor issues.

14 Before I went on the bench, I will say, I had a lot of  
15 dealings with that because I was debtor's counsel for a portion  
16 of a very large public company. A bunch of subsidiaries that  
17 filed for a proceeding in a very large public company. And so,  
18 there were a lot of issues to work through whenever we had to  
19 produce documents about who could assert privilege and why. So,  
20 I was just curious if that was a problem here. It really didn't  
21 seem like people had raised that, but it was just something that  
22 jumped out at me from the document discussion. So, has that  
23 been an assertion on behalf of Mr. Lindberg and the Lindberg  
24 entities?

25 MR. KAJON: Not at all, Your Honor. I am aware of the

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1 issue; I've dealt with it in other cases; but it has never been  
2 raised by Mr. Lindberg, Global Growth, or any of the respondents  
3 or, frankly, any other party. I don't know their response in  
4 front of me, but I recall what it says. The privilege they  
5 assert is Mr. Lindberg's privilege in his capacity as a  
6 shareholder. And he's not even a direct shareholder of the  
7 debtors, not that that would matter. He's a shareholder of  
8 Global Growth, and I believe there are at least two holding  
9 companies between Global Growth and these debtors. But they're  
10 asserting his privilege in his capacity as a shareholder. And  
11 I've never seen anyone assert that in my entire life, and I'm  
12 aware of no decision that recognizes any such right.

13 The corporation is a separate legal entity from the  
14 individual. It has its own privilege, separate and apart, from  
15 whatever privilege the individual has. The board of directors  
16 or the officers it duly authorizes can assert a privilege on  
17 behalf of the corporation. Mr. Lindberg no longer has any such  
18 capacity. Only the JPLs have the right to assert the debtor's  
19 privilege. And Mr. Lindberg, as a shareholder or an indirect  
20 shareholder has no right to assert any privilege with respect to  
21 the debtors. But that's the right they're asserting. I'm an  
22 indirect shareholder, therefore, I can assert the privilege.  
23 And it's, frankly, ridiculous, and wholly unfounded.

24 THE COURT: Okay. I understand your position. I've  
25 read their papers. Okay. All right. I think I'm going to let

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1 the respondents respond to your arguments, and then I'll give  
2 you an opportunity to reply.

3 MR. KAJON: Thank you.

4 MR. MOORE: Your Honor, Seth Moore of Condon Tobin on  
5 behalf of Mr. Lindberg and Global Growth Holdings, Inc. Your  
6 Honor, before I begin, my partner, Mr. Pace, is on the phone as  
7 well. I'm endeavoring to take over several matters for him,  
8 including this one, as he and his wife just recently had a new  
9 baby. And so, he's supposed to be on leave. However, because  
10 of his long-standing knowledge of these matters and the complex  
11 nature of them, he has graciously agreed to dial in today and be  
12 a part of this as well. I bring that to Your Honor's attention  
13 solely because there may be questions and issues were he has  
14 knowledge that I'm not up to speed on yet, and I may turn over  
15 those specific things to him if that's all right with the court.

16 THE COURT: It is. And by the way, congratulations,  
17 Mr. Pace. I know the last time that you were in front of me,  
18 you were waiting for the blessed event to happen, so I'm glad to  
19 hear that it has happen, and everybody is hopefully healthy.

20 MR. PACE: Yes, Your Honor. Thank you very much. We  
21 are now, and I appreciate the court's comments on that. Thank  
22 you so much.

23 THE COURT: Okay. Yes, Mr. Moore, I'm fine with, and  
24 partner me for using this phrase, with you two tag teaming  
25 things. I understand you are taking over from Mr. Pace. He was



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1 clear about that on the record the last time he had a matter  
2 before me, related to this case. But go ahead, please. Feel  
3 free to present your argument.

4 MR. MOORE: Thank you, Your Honor. Your Honor, it  
5 appears to me from the request of the JPLs and the assertions in  
6 some of their pleadings, I think they have a misunderstanding of  
7 what Global Growth is, what it has, and what it does. Mr.  
8 Lindberg is the owner, directly or indirectly, of hundreds of  
9 direct companies. These companies have almost 8,000 employees,  
10 and they're located all over the world. Global Growth Holdings,  
11 Inc., one of the holdings companies, is, of course, in North  
12 Carolina. The implicit assumption of the motion, and the reply,  
13 and the arguments today is that Global Growth, all these  
14 companies are a monolith, managed and controlled out a central  
15 management locus there in North Carolina, and that's just not  
16 how they operate. And we've tried to explain that.

17 These companies are, including the debtors, are a  
18 loose federation of entities and they go under this family name  
19 of Global Growth, the Global Growth family of companies. But  
20 these entities are autonomous. They have their own management  
21 teams, they have their own books and records, their own day-to-  
22 day operations that they oversee themselves. And it's not done  
23 centrally out of North Carolina.

24 Your Honor, we have gone over this. And when I say  
25 "we", this firm has gone over the turnover order. All the

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1 particular items in that order. The additional requests from  
2 the JPLs' counsel with our clients. We've performed a search of  
3 what is available to us. And we have not, and do not take the  
4 position that what is available to us shouldn't be turned over.  
5 As a matter of fact, Your Honor, the only things that we have  
6 that have been withheld are the items subject to privilege,  
7 which we'll get to momentarily. But otherwise, Your Honor,  
8 everything our client had and has were kept and are kept on drop  
9 box servers. And in many cases, we just turned the links that  
10 our clients have access to, the drop box links, we just turned  
11 directly over to the JPLs. They can click on it and see exactly  
12 what our clients see, in exactly the form and manner that their  
13 kept. In the instances where we didn't just turn over the  
14 links, we exactly copied the drop box files, again, so that they  
15 can be seen by the JPLs in the exact manner and form in which  
16 our client seeks them.

17 Your Honor, because the JPLs haven't been able to find  
18 these documents or what they expect to be able to find, first of  
19 all, assumes that these things exist, and it assumes that these  
20 things must be held by Global Growth. They're simply not. We  
21 have agreed with the JPLs that there are likely documents that  
22 these entities are entitled to, relating to their investments  
23 and day-to-day operations, out there that we don't have access  
24 to, and haven't given it to them because we don't have them to  
25 give. We have repeatedly told them that these entities operate

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1 autonomously, that the bulk of their record they're looking for  
2 would be located down in Bermuda with those former employees at  
3 their location on their servers, their computers, and indeed, we  
4 see in their reply, and we heard today that the JPLs have over a  
5 million documents they've obtained in that form and manner.

6           Additionally, Your Honor, there are entities, like  
7 these debtors, that Mr. Lindberg may ultimately be the owner of,  
8 that he doesn't have control over, and cannot access their books  
9 and records, like the other insurance companies. There are many  
10 of which are under a North Carolina rehabilitator. We don't  
11 have access to those entities' books and records. And those  
12 entities may have books and records that relate to some of the  
13 debtor's investments. But they're not in our possession,  
14 custody, and control, and as such, we can't go obtain those for  
15 the JPLs. The simple fact is, Your Honor, we've turned over  
16 everything that we've been able to find in our possession,  
17 custody, and control to the JPLs, but for the documents on the  
18 privilege logs.'

19           With respect to the privilege issue, Your Honor, Mr.  
20 Lindberg hasn't told us that he waives, and hasn't waived the  
21 privilege, either his individual privilege or the privilege for  
22 the entities that he owns. This law firm can't waive it for  
23 him. And the court has seen the arguments and our response  
24 based on the caselaw. There are questions in our mind whether  
25 or not the JPLs have the privilege, either the attorney-client

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1 or attorney work product, and as such, without direct  
2 instruction from our client, this firm can't waive and turn over  
3 those documents. And so, Your Honor, there's no nefarious  
4 reason for any of this. As Mr. Kajon said, the assertion of  
5 privilege is not a red herring designed to bot anyone down. The  
6 court can see the various correspondence and the efforts that  
7 we've gone through to give them what we have. There's no  
8 reason, other than not being able to waive the privilege, that  
9 those documents have been retained, Your Honor. And as such, I  
10 think the court should look at the pleadings in front of Your  
11 Honor and the various evidence and determine that we've complied  
12 with the turnover order and met our burden, and that there's no  
13 nefarious reason for asserting privilege as we've done. Thank  
14 you, Your Honor.

15 THE COURT: Okay. Mr. Moore, I have some questions  
16 for you. So, you've heard the arguments; you've seen the reply  
17 pleadings from Ms. Frisby; and some of the depositions that were  
18 taken. It certainly does seem from some of the depositions that  
19 were taken, and in the statements there that there were things  
20 that Global Growth handled for the debtors that were not handled  
21 by the debtors. And I say "Global Growth" loosely because I can  
22 only rely to what the deponents are saying. I don't know if  
23 they're using Global Growth to mean the entire enterprise or  
24 it's really Global Growth, but I'm stuck with what's in the  
25 depositions. So, it does seem to me from the depositions that

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1 were produced by the debtors in the reply that there are things  
2 that have been handled by Global Growth that were not handled in  
3 Bermuda. At least that's the testimony of parties. For  
4 example, it does seem that decisions relating to loans and  
5 investments were not necessarily made in Bermuda and were, in  
6 fact, made by "Global Growth".

7 It also seems like there were some other matters  
8 relating to bank accounts and withdrawals or transfers of funds  
9 that also had to go through Global Growth. I guess my question  
10 for you is, does the privilege information that you're  
11 asserting, cover all that information? Did you produce all of  
12 that information? Because it does seem like there is  
13 information in certain specific categories where the decisions  
14 were not being made in Bermuda. And therefore, there's a reason  
15 that the information is not there. And that goes to some other  
16 related things like, perhaps, additional valuations of third  
17 parties, of assets, and those kinds of things. So, what is your  
18 answer to that?

19 MR. MOORE: Yes, Your Honor, Seth Moore again. So,  
20 I'll let Mr. Pace correct me if I'm wrong, but my understanding,  
21 Your Honor, is that what items we would have control over, what  
22 we have turned over are broadly speaking items investment  
23 related materials. And indeed, everything we had and everything  
24 we have found has been turned over. Nothing withheld. As to  
25 your question on what is in the privilege documents, I'm going

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1 to let Mr. Pace response to that since he was here and involved  
2 when the privilege logs were generated.

3 MR. PACE: Thank you, Your Honor. This is Jared Pace.  
4 If I may?

5 THE COURT: Yes.

6 MR. PACE: Thank you, Judge. So, the privileged  
7 information is related entirely and exclusively to the two  
8 pieces of litigation where our firm represented PBLA. One  
9 litigation was in New York with a component of an arbitration in  
10 Puerto Rico. That's with ULICO, the biggest creditor. And the  
11 other litigation is the one that's on trial actually right now  
12 in North Carolina, where you do have joint defendants, Greg  
13 Lindberg, Global Growth Holdings, Inc., which was formerly known  
14 as Academy Association, Inc., along with PBLA. Mr. Kajon and  
15 his firm are actually *pro hac*'ed into that case and represent  
16 PBLA in that case. So, the privileged materials relate  
17 exclusively and entirely to those two pieces of litigation.  
18 That's what I call privilege; that's what I call work product.

19 Does it relate to services provided by Global Growth?  
20 The answer is, that's right. There were services provided by  
21 Global Growth at some point. Now, we'll have to talk about who  
22 Global Growth is. There were some services provided by Global  
23 Growth to the debtors. And that's the source of information,  
24 the source of documents that have been produced. It's clear in  
25 the other side's papers, and it's not as clear in Mr. Kajon's

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1 presentation this morning, but our side has actually produced  
2 thousands of documents within our possession, custody, and  
3 control as they are kept and as they are maintained in the  
4 ordinary course of business. They weren't funneled through a  
5 vendor's services, they weren't bates' labelled, they were  
6 produced as our clients see them on their screens. That's what  
7 they have.

8           Broad strokes, speaking very broadly, what those are,  
9 are investment-related materials. You can think of the North  
10 Carolina corporate office as being more involved in MA or  
11 investments. Less involved, almost not involved much at all in  
12 day-to-day operations, banking, financial services, things like  
13 that. Those are maintained, as Mr. Moore said, by the  
14 autonomous entities, and that's been consistent, there's been a  
15 consistent communication from our client and firm to Mr. Kajon  
16 and his firm and his client. Now, going back and talking about  
17 who Global Growth is, someone is on the call today representing  
18 the North Carolina insurance companies. That's important here  
19 because some of these investments, PBLA is a lender on some of  
20 these investments, at least before those investments were  
21 contributed to the reinsurance trust, but they're not the only  
22 lender. There are other insurance company lenders, including  
23 these North Carolina insurance companies.

24           The North Carolina insurance companies have zero  
25 employees. No employees whatsoever. Their operations and

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1 activities are conducted by another entity called CBIC LLC.  
2 That's a management company. This is where the source and the  
3 confusion lie. Mr. Lindberg is the ultimate owner of all these  
4 companies. And so, I understand Mr. Kajon's confusion,  
5 understandable confusion. If you own those companies, don't you  
6 control those records? And the answer is no. No, we don't. We  
7 haven't controlled their records really since mid of 2018 when  
8 those insurance companies were placed into a supervision,  
9 resulting more into a rehabilitation. And CBIC now, even though  
10 they're owned by Mr. Lindberg, are operationally controlled by  
11 the rehabilitator, the North Carolina rehabilitator. CBIC has  
12 separate counsel down in that North Carolina case that Mr. Kajon  
13 is *pro hac*'ed into. They know this. I explained this to Mr.  
14 Kajon twice. As recently as April, and again a few weeks ago.

15 We don't have CBIC records. There's a good place for  
16 you to start, and that would be lender side records. What a  
17 lender would maintain with respect to these investments. So,  
18 that would be a good place for you to start just like us. If we  
19 want records from the North Carolina insurance companies or from  
20 CBIC, we have to go through their counsel. It's weird because  
21 our client, Mr. Lindberg owns them all, but because of how  
22 they're structured, and the rehabilitations, and the senior  
23 sister there, the control piece is missing. That's why we don't  
24 have some of the documents they expect us to have. That's a big  
25 reason why.



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1 And then as Mr. Moore explained, another big reason is  
2 because it was just a business philosophy of these companies not  
3 to micromanage from a central location. Now, what that means  
4 and that's true of all these companies, 130 plus operating  
5 companies. Now, what that means for recordkeeping is there is  
6 no folder that says all the books and records of these four  
7 debtors. It doesn't exist. There is not a centralized location  
8 of that.

9 If you want to get into more specific requests, more  
10 specific items, which is the process we've been going through  
11 with Mr. Kajon and his firm since really October of last year,  
12 then that allows our client to do more pinpointed searches for  
13 some of these drop box links that we can just turn over  
14 wholesale, and that's what we've been doing. And in fact, in  
15 all candor, judge, the reply they filed just a few days ago, I  
16 read the reply, I haven't read all the declarations, but the  
17 three things that stuck out to me, just like Mr. Kajon said, he  
18 was 99 percent sure his client didn't have them, but he wanted  
19 to be 100 percent sure, same thing. The three things that stuck  
20 out to me, okay, HR Ratings. I know I've seen HR Ratings. I  
21 know we've produced HR Ratings.

22 And in fact, we've produced HR Ratings going back to  
23 November 13 of 2020. That was in our very first production to  
24 them. There's also been productions of files called ratings.  
25 These ratings have been produced. But I asked the client about

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1 that. I said, hey, shouldn't there be more here? And because  
2 of turnover, there has been a turnover of key people at our  
3 firm, and these records go back a long time, lack structure,  
4 it's incumbent upon us to keep asking. We don't want to get  
5 into a position where we're telling the court we've produced  
6 everything, then we've got to go produce something else. That's  
7 why we've limited our certifications, our verifications and  
8 everything to we've done a reasonably diligent inquire. More  
9 than a reasonably diligent inquire of all the documents we've  
10 seen and have produced them as we see them.

11 This is not a situation like a lot of motion to compel  
12 situations where you've got one party saying, I've got  
13 documents, but they're not entitled to them because of relevance  
14 or confidentiality or something like that. That's not this  
15 situation. If you want the documents, the books, and records of  
16 these debtors, you can have them, to the extent we have them.  
17 But we can't obviously give you what we don't control. And you  
18 need to understand what it is we don't control. And we've tried  
19 to explain that many, many times to Mr. Kajon and his firm and  
20 to Deloitte. So, that was really longwinded. I think the only  
21 question to me is privilege, but that's my perception and view  
22 of what's going on here, and if the court has any further  
23 questions for me, I'm happy to try to field them.

24 THE COURT: I do. I have a couple. So, the BitLocker  
25 key situation, it does seem like there's still a few missing.

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1 And they seem to think that Global Growth has them. Do you?

2 MR. PACE: Good question, Your Honor. I think I  
3 started -- this is Jared Pace again. I think I started listing  
4 three things in their reply that jumped out to me as, I need to  
5 sure this up with our client. One was the HR Ratings; the  
6 second was the BitLocker keys. I requested, do we have  
7 BitLocker keys, and no one has confirmed that we have BitLocker  
8 keys. Now, what I gleamed from the papers that the Deloitte  
9 team has filed is they have obtained these BitLocker keys from  
10 multiple key individuals, including, I would point out, the  
11 debtor's in-house counsel, and we coordinated this. And they  
12 have access to those key employees' drives. The only thing I've  
13 seen is an inability to access one person's BitLocker  
14 information. And that's an individual named Scott Boug. He was  
15 the CEO of these debtor entities. And apparently, Deloitte  
16 terminated Mr. Boug when they took over without securing the  
17 information from him.

18 Our firm, our clients have done nothing in my  
19 knowledge to prevent Mr. Boug or to tell Mr. Boug that he can't  
20 turn over that information and provide whatever information he  
21 has to the JPLs. We have not done that. I think I recall some  
22 correspondence from Mr. Kajon that said Mr. Boug has actually  
23 gone to CBIC seeking advice as to whether or not he should turn  
24 over that information. But once again, we don't control CBIC.  
25 We're not standing in the way of them getting the information

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1 from Scott Boug, but we don't control Scott Boug either.

2 THE COURT: Okay. That sort of answered my question.  
3 But it sounds like you're going to have to scour to see if you  
4 have any more BitLocker keys around that they're looking for.  
5 That certainly still seems like it might be an issue. You said  
6 you were going to doublecheck it.

7 You mentioned this arbitration that's going forward in  
8 New York relating to ULICO. Who are the parties in that  
9 arbitration? Is it just PBLA and ULICO?

10 MR. PACE: The New York court proceeding is a court  
11 proceeding and a spinoff of that is an arbitration that occurred  
12 and is still occurring actually, technically speaking, in Puerto  
13 Rico. The only parties to those pieces of litigation  
14 arbitration are PBLA and ULICO. That's it.

15 THE COURT: Okay. And your firm never represented  
16 ULICO, right?

17 MR. PACE: No, they're adverse, they're a third party.  
18 Not within the Global Growth universe, not owned by Greg  
19 Lindberg.

20 THE COURT: I understand. My question was just a yes  
21 or no answer. Your firm never represented ULICO in connection  
22 with this matter, right?

23 MR. PACE: That's correct.

24 THE COURT: All right. Okay. I think I'm going to  
25 give Mr. Kajon a chance to respond.

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1 MR. KAJON: Thank you, Your Honor. Nicolas Kajon  
2 again. Your Honor, there are still so many unanswered questions  
3 and so many inconsistencies. When someone stands up in court,  
4 and I'm not accusing Mr. Pace or Mr. Moore of any improprieties,  
5 but when someone stands up in court and says, we've complied, we  
6 don't have anymore documents, we have a hard time believing that  
7 when there are multiple emails showing that Global Growth had  
8 the documents; when the person who submitted a declaration in  
9 support of their response said, you guys have all the documents,  
10 but then admitted under oath that in fact he had no idea what  
11 documents were available to the JPLs in Bermuda. Moreover, Mr.  
12 Sharma testified that he coordinated with Mr. Bostic that he,  
13 Mr. Sharma, looked for responsive documents in India, and Mr.  
14 Bostic was leading the team that was looking for responsive  
15 documents in North Carolina. Mr. Bostic said, I'm indirectly  
16 involved, and I didn't coordinate with Mr. Sharma. So, their  
17 own witnesses contradict each other. How thorough was this  
18 document search when their own proffered witness thinks that Mr.  
19 Bostic was heading a team looking for documents in North  
20 Carolina, and Mr. Bostic said no, I wasn't doing that.

21 So, their whole position that we looked really hard  
22 and in fact we've given you everything is just undermined by the  
23 facts that we have here by sworn testimony, by emails to and  
24 from Global Growth. And I don't know how the hundreds of other  
25 companies that Mr. Lindberg owns, and controls were managed, but

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1 when the debtor's employees wanted information about bank  
2 accounts, or wanted information about the debtor's assets, they  
3 communicated with Global Growth. They did not communicate with  
4 the insurance companies that Mr. Pace referred to that are now  
5 in rehabilitation. They asked Global Growth for the documents.  
6 They asked Global Growth for the information. They asked Global  
7 Growth for the BitLocker keys, and got it. And we annexed one  
8 of those emails to our papers. Someone at Global Growth  
9 providing them with a BitLocker key in March of last year, which  
10 was required because they were going into lockdown and would be  
11 working from home. They needed it for the laptops. So, their  
12 whole explanation is belied by the record.

13 With respect to the privilege issue, it's nice that  
14 Mr. Lindberg hasn't waived the privilege, but it's irrelevant.  
15 We're not asking him to waive his personal privilege. Mr. Pace  
16 said that his firm represented PBLA in two actions. Great.  
17 That's for the admission. It's PBLA's privilege. My clients  
18 control it. Mr. Lindberg doesn't control PBLA's privilege. And  
19 they're not even saying that Mr. Lindberg is asserting PBLA's  
20 privilege, they're saying he's asserting his privilege as a  
21 shareholder of a company that owns another company, that owns  
22 another company, that owns PBLA. What kind of privilege is  
23 that? That has nothing to do with the debtors. We're seeking  
24 the debtor's records and the debtor's attorneys' files.

25 Mr. Pace's firm represented PBLA in at least two

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1 pieces of litigation on behalf of the debtors. We want those  
2 files. We do not want Mr. Lindberg's personal files. We're not  
3 asking for attorney-client communications between Mr. Lindberg,  
4 in his individual capacity, and many of his many lawyers.

5           The issue with respect to micromanaging and they just  
6 don't have the documents available to them, we just can't  
7 believe because the record before Your Honor undermines that. I  
8 did receive one other document this morning. On May 12 of this  
9 year, Mr. Lindberg was deposed in the North Carolina  
10 rehabilitation litigation, and I just received that transcript  
11 this morning. And he testifies for pages about the due  
12 diligence process that Global Growth engaged in. First, he  
13 discusses MA transactions, and then he goes into loan  
14 transactions, when one of the companies made a loan. And it  
15 sounds like exhaustive due diligence. It sounds like there were  
16 many people involved. And they all had access to these records.  
17 That's what Mr. Lindberg testified to. That they all had  
18 access. That there were people at Global Growth, there were  
19 people companies that were owned by Global Growth who might be  
20 involved to deal with this process. And they all had access to  
21 these due diligence materials. So, there was some kind of  
22 sharing system, presumably drop box, because that's what both  
23 witnesses testified to.

24           So, there were lots of documents generated during the  
25 due diligence process, and we don't have them. They were shared

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1 among multiple individuals, so they must be available. I don't  
2 know if there's a central server or a decentralized server. I'm  
3 not a tech guy. But if multiple parties at Global Growth or its  
4 affiliates had these documents, they should still have them, and  
5 they haven't been turned over to us. As you can see from Ms.  
6 Frisby's declaration, we have just a very small percentage of  
7 the documents that we know must exist. We don't even have  
8 complete loan documents. But simply having a loan document that  
9 PBLA, for instance, made a loan to XYZ for \$20 million, okay,  
10 that's a starting point. But there must be a file that goes  
11 with those loan documents. What is XYZ? What does it own?  
12 Where are the financial statements? What due diligence was done  
13 before that loan was made? And what information did you receive  
14 from the borrower after the loan was made? Those should all be  
15 in PBLA's loan files. And all that information is not in PBLA's  
16 loan files.

17 In many instances, we don't have organizational  
18 documents with respect to the counterparties, and we don't have  
19 corporate resolutions. Again, we have some, and we describe  
20 that in our papers, but we don't have most of it. We don't have  
21 most of the valuations that were done with respect to the  
22 counterparties, or the assets owned by the counterparties.  
23 These are critical documents that the JPLs require to fulfill  
24 their court mandated duties. There's an ample record before  
25 Your Honor that Global Growth has these documents. For Global



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1 Growth's lawyers to stand up in court and say we don't have them  
2 without some kind of explanation as to where they went to is  
3 just astounding to us. I expected them to come into court and  
4 say, oops, we made a mistake, and we found a whole treasure  
5 trove of documents. Here they are.

6 There is a fulsome record before Your Honor that  
7 Global Growth has the documents that we've been seeking for  
8 months now. My firm first requested documents in October of  
9 last year. The JPLs informally requested documents even before  
10 that, soon after their appointment. There's been no explanation  
11 of where these documents are and why they're not available, and  
12 why they have not been turned over. And again, there's an ample  
13 record that Global Growth has the documents.

14 And again, on the privilege issue, it doesn't belong  
15 to Mr. Lindberg. He can assert his personal privilege. Mr.  
16 Pace admitted that they represented PBLA in those two  
17 litigations, so its PBLA's documents, and PBLA's privilege to  
18 assert. A lawyer can't assert a privilege on his own. Only the  
19 client can assert the privilege. My client can assert the  
20 privilege; my client has requested a privileged document; my  
21 clients are entitled to the privileged documents. Thank you,  
22 Your Honor.

23 THE COURT: Okay. All right. I guess I'm going to  
24 start maybe with the privilege documents here for a second  
25 because I have looked at the caselaw. I'll start by saying that

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1 I agree with Mr. Kajon that at least with respect to the debtors  
2 themselves and any privileges that might be asserted by the  
3 debtors themselves. With respect to attorney-client privilege,  
4 it is clear to me that under the applicable caselaw in this  
5 circuit that that privilege belongs to the joint provisional  
6 liquidators. My analysis is similar to the **China Medical**  
7 **Technologies** case that was cited to by Mr Kajon. I think it's  
8 clear here by applying the touch-base doctrine, it seems like  
9 the communications took place, many of them, here that we're  
10 trying to get, in the United States, that U.S. law would apply  
11 to those, and that there's obviously caselaw under both  
12 **Weintraub**, under also the **China Medical** case and also under the  
13 Bankruptcy Code and the provisions in chapter 15, as well as  
14 language in provisions for 542 that would apply in chapter 15  
15 that the privilege here does belong to the JPLs, and it would be  
16 their choice to waive it or not waive it. So, I don't believe  
17 there's a basis for withholding documents on the grounds that  
18 they're subject to attorney-client privilege somehow.

19 Mr. Kajon is also correct, in that after having looked  
20 at the caselaw, I haven't found any cases for an indirect or  
21 direct shareholder who's been able to assert the company's  
22 privilege in a situation where there has been a liquidator  
23 appointed and a foreign liquidation. Or for that matter, a  
24 trustee or a liquidator appointed in the United States where  
25 that applies. I also don't believe that the BCE cases are

1 applicable to the situation either, and I think it's  
2 distinguishable. So, my ruling is that the attorney-client  
3 privilege belongs to the JPLs, and only they can waive it or  
4 assert it.

5           However, this gets a little trickier with the work  
6 produce privilege, and I don't know that it's such a clear-cut  
7 answer on that in the same way that Mr. Kajon's been arguing on  
8 the attorney-client privilege. On the work product privilege,  
9 the caselaw in the 2<sup>nd</sup> circuit is very clear that that privilege  
10 actually belongs both to the attorney and to the client. So, to  
11 the extent it applies, it is not something that just the client  
12 can assert. And obviously, here, with respect to the client,  
13 I'm again finding that the client's ability to assert the work  
14 product privilege or to waive the work product privilege, which  
15 is really more applicable here, would be the JPLs having that  
16 sole right. So, I agree with Mr. Kajon that only the JPLs could  
17 assert the client's right to waive work product privilege here.  
18 However, when the attorney is required to disregard work product  
19 privilege and turn it over to the client, it is not such a  
20 clear-cut issue here to me with respect to the second  
21 litigation, in particular, that we're going to talk about.

22           With respect to the first litigation which seems to  
23 only be involving ULICO and PBLA, I think the caselaw is clear  
24 that if someone is a former client, they are obligated to turn  
25 over documents to the client in that scenario when they cease to

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1 be the client. There are some limited exceptions to that under  
2 New York law or for that matter, North Carolina law, but it's  
3 fairly generally broadly what Mr. Kajon noted and the caselaw  
4 cited in his motion papers.

5           The problem I have is that I can't tell from these  
6 documents the way that the privilege log was put together, which  
7 I note, I do not believe complies with Judge Chapman's turnover  
8 order or, for that matter, our local rule 7034 and what's  
9 required. But I can't tell from that if there's any basis under  
10 the law that it falls in any of the exceptions to a former  
11 attorney being required to turn over that. And so, what I would  
12 suggest here, I realize this is more work for everybody, but I  
13 would suggest that to the extent that the law firms wish to  
14 claim work product privilege here, with respect to the ULICO  
15 action, it's going to have to be spelled out in the privilege  
16 log as to physically the nature of why this is prepared in  
17 contemplation of litigation. And also, I think there has to be  
18 briefing on why that wasn't required to be turned over at the  
19 time that your representation ceased to the JPLs. And I don't  
20 see any reasons right now based on what I can tell in these logs  
21 that there is any such basis for that. And so, what I would be  
22 inclined to do, would be to require you to turn over that  
23 information to the extent that the JPLs decide that they wish to  
24 waive the work product privilege. But because there are limited  
25 exceptions under the caselaw for times where former attorneys

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1 are not required to do that, I think the more reasonable thing  
2 here, although it is a delay, is to allow you to (A) revised the  
3 privilege log, eliminating attorney-client privilege assertion,  
4 limiting it to work product privilege assertion. And with  
5 respect to the ULICO action, explaining why you feel that any of  
6 these documents fit within those exceptions. If you cannot do  
7 that, I am going to require all of them to be turned over to the  
8 extent that Mr. Kajon's clients, the JPLs, determine to waive  
9 the work privilege.

10 So, that's my ruling with respect to that. I would  
11 ask counsel to take a look at the privilege log, redo it with  
12 respect to the work product privilege only, explaining why these  
13 documents were prepared in contemplation of that litigation,  
14 providing more information about the nature of the documents,  
15 and then having a separate column explaining why it falls in the  
16 category of a former client situation, the former client here  
17 being the corporation, and why you're not required to turn over  
18 that. Again, I don't see a basis for it, but I'm going to give  
19 you an opportunity to make an argument if there is such a basis.

20 With respect to the second litigation, that's a little  
21 more complicated to me. Because there are different parties  
22 that are continuing to appear in that litigation that it seems  
23 like, although the law firms still represent. Obviously, not  
24 with respect to PBLA and documents that are only PBLA work  
25 product privilege, but I don't know enough about those privilege

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1 documents from the privilege log, again, which is woefully  
2 deficient, and in my opinion, not in compliance with either  
3 Judge Chapman's turnover order or for that matter, the local  
4 rule. But I cannot tell from the privilege log why they're  
5 subject to the work product privilege, whether the work product  
6 privilege is being asserted, or the attorney-client privilege,  
7 for that matter that's being asserted, relates to PBLA, as  
8 opposed to some of the other defendants because I think that  
9 makes a difference. And whether or not with respect to those  
10 documents, again, now that you're former counsel to PBLA, if  
11 they were prepared in contemplation of litigation, the privilege  
12 only belongs to PBLA. It was work product prepared for PBLA in  
13 connection with upcoming litigation. If all those things are  
14 true, then I have the same issue about why it shouldn't be  
15 produced given the former relationship of PBLA and the caselaw,  
16 again cited in Mr. Kajon's motion that relate to what happens  
17 when an attorney has a work product privilege and then ceases to  
18 represent the client. And the client is now the party dealing  
19 with the litigation, which is the case here for the JPLs on  
20 behalf of the corporation.

21 Again, I think what would have to happen with this is  
22 a review of the privilege log, relating to that litigation where  
23 there is no attorney-client privilege be asserted in the  
24 reviewed privilege log. And with respect to the work product  
25 privilege, there is information provided about the work produce

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1 privilege where I at least can determine the nature of why it's  
2 covered by the work product privilege to start with, and then  
3 affirm that the work product privilege only relates to PBLA in  
4 that circumstance, or for that matter, the attorney-client  
5 privilege only relates to PBLA in that circumstance, and if so,  
6 what is the basis for that. And then, again, is there a basis it  
7 was prepared solely for PBLA in connection with that litigation.  
8 And as counsel to PBLA, which you are now former counsel, why  
9 there is any exception to those documents being turned over.

10 I think it's a little more complicated in that  
11 litigation only because there are multiple defendants, and the  
12 parties' firm is representing some of those defendants. So, I  
13 think that we require more information in order to determine  
14 what to do with that. I think the law is fairly clear on this,  
15 I just think the problem is that the facts and the documents  
16 that I've been provided for the privilege log don't allow me to  
17 figure out if there's any basis for my not wholesale determining  
18 that all of these documents should be turned over to the JPLs,  
19 even under the work product privilege. But it is possible in  
20 the second litigation that (A) there's either attorney-client  
21 privilege where there's joint privilege issues, that's what I  
22 raised earlier, or (B) whether or not there's an issue about the  
23 work product privilege. So, that's part one on this. That has  
24 to do with the privilege documents.

25 Part two on my ruling is what to do with the request

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1 for the turnover. So, it does seem to me that even Mr. Pace has  
2 acknowledged that there are a handful of things -- I'll use my  
3 phrase for what he said -- for the Lindberg entities, where he  
4 thinks it is worthwhile for the Lindberg entities, going back  
5 and looking at the files again to make sure that they have  
6 provided all the information that they have. in their files.  
7 So, I would suggest that that occur.

8 I would suggest to the extent that there have been  
9 identified in the reply, in particular and in all the papers for  
10 the reply, different allegations about documents that were  
11 Global Growth's, that there's an explanation given in writing by  
12 the Lindberg entities, I'm just using a phrase in the motion, as  
13 to why those documents aren't in their possession or don't exist  
14 with respect to those specific things identified I the reply. I  
15 think, in fairness to the Lindberg entities, some of the answer  
16 might be what's been argued by Mr. Pace and Mr. Moore, that  
17 there are other entities that may have this information but are  
18 considered to be part of Global Growth as a group but are not  
19 actually Global Growth the actual corporate entity or not Mr.  
20 Lindberg's property.

21 So, there may be other entities that are related to  
22 this. It certainly sounds like it's possible with respect to  
23 some of insurance information, and that may be an answer to some  
24 of the reason why some of these documents are not here, because  
25 they are not documents that were handled by Global Growth the



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1 corporation, but would be handled by other entities, perhaps in  
2 the Global Growth entities. I do think that after the scouring  
3 of the further information and the response that needs to be  
4 filed with respect to the issues raised specifically in the  
5 reply, which I'm going to give the Lindberg entities and Mr.  
6 Lindberg the authority to do so, I do think that after that  
7 occurs, then the request for a certification is something that  
8 could be considered. I think in a first instance, it's best to  
9 allow the Lindberg entities, and Mr. Lindberg, and the law firms  
10 to scour their books one more time and see if there's anything  
11 else that comes up. And then I think it's best that they  
12 respond in writing to the issues raised in the reply  
13 specifically as to what is missing. And then I think we can  
14 determine if there's something else that we need to do after we  
15 see those responses. And that's my ruling as to what needs to  
16 happen. So, I guess we need to talk about timing on some of  
17 these things.

18 So, with respect to redoing your privilege log, which  
19 is, I understand, pardon me for saying it, no fun, having done  
20 them a lot as a lawyer. To make them more detailed and address  
21 the issues I've raised, how long do you think that you will  
22 require to do that at Condon? And I don't know if anybody here  
23 is representing Mr. Charles (inaudible). I will just have them  
24 use the same date that we work out for you. Mr. Pace or Mr  
25 Moor, how long do you think you would require?

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1 MR. PACE: Thank you, Judge. Jared Pace here. Of the  
2 two things we have to do, this one I think is more exclusively  
3 within our law firm's control and doesn't require as much client  
4 input or communication. So, I think we ought to be able to  
5 handle the privilege log piece faster than probably the next  
6 piece. I would ask for at least 14 days to do that. And one of  
7 the big reasons is the North Carolina case has everyone's  
8 attention right now at the law firm and at the client level. To  
9 the extent we need any client input on this, it's going to be  
10 very difficult, at a minimum, to get their attention. That  
11 trial is going on right now. It started on Monday, and it's  
12 scheduled to go through Friday of next week, July 2. And then  
13 of course you've got the holiday right after that. So, I would  
14 ask for some time after the holiday for the privilege log piece.

15 THE COURT: Okay. So, I think that's the week of the  
16 12<sup>th</sup>. How about Field Day, the 14<sup>th</sup>? That gives about three  
17 weeks from today.

18 MR. PACE: I think that would be a sufficient amount  
19 of time, yes. Thank you.

20 THE COURT: Okay. All right. So, July 14, you're  
21 going to provide the revised privilege log with all the things I  
22 requested that you do. Then we need to talk about two things,  
23 the scouring for additional documents, and then a written  
24 response to the issues raised in a reply responding why you  
25 don't have those documents in particular. And I'm guessing

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1 you'll want to scour your documents before you file a written  
2 reply. So, what is the timing you think for that?

3 MR. PACE: Yes, Your Honor, that piece, I'm going to  
4 reply heavily on my clients for that, obviously. I don't have  
5 the documents; I don't have access to their materials. Client  
6 participation again is very distracted, limited, engaged with  
7 the MLU case right now. So, I think the first time I'm going to  
8 be able to effectively engage everyone that needs to be engaged  
9 on this is going to be some time after the holiday. They  
10 already have the reply. I mean I've given them the rely;  
11 pointed out some of these things that some one needs to be  
12 looking for and doublechecking it --

13 THE COURT: Okay. Respectively, before I decide  
14 whether I'm going to require you to do certifications, issue an  
15 order compelling, further compelling, or sanctioning you, just  
16 being clear, I do think you would want to file a reply to do  
17 this. So, I think we need to be realistic about it. I agree  
18 with that. I want to give you a chance to file your documents  
19 and file a reply on behalf of your client, explaining these  
20 issues. And when I say, sanctioning you, I mean sanction your  
21 client. I'm sorry. Just to be clear. But I think the issue is  
22 that you -- you know, this has been going on for a while, it's  
23 reasonable to do that. How about I give you to the 21<sup>st</sup> for that  
24 project? That would give you a couple of weeks. Actually,  
25 maybe in fairness, how about the 23<sup>rd</sup>? So, that would give you

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1 about two weeks more from the start after the holiday, two and a  
2 half weeks because the holiday will be over on the 5<sup>th</sup>. So,  
3 you'll have from the 6<sup>th</sup> through the 23<sup>rd</sup> to file such a reply.  
4 And obviously, if you find additional documents in the meantime,  
5 you will produce them before the 23<sup>rd</sup>.

6 MR. PACE: Yes, Your Honor, we'll get it done.

7 THE COURT: Okay. All right. Then what I think would  
8 make sense is after that, we need to set another date for the  
9 hearing with respect to the requests that I haven't dealt with n  
10 the motion. So, I think continuing this motion till the day  
11 after the 23<sup>rd</sup> is appropriate. I think that would leave us with  
12 the week of the 25<sup>th</sup>. How do you feel about the 27<sup>th</sup>, 28<sup>th</sup>, or  
13 the 29<sup>th</sup>? I don't know, Mr. Kajon, whether you'll want time to  
14 look at the reply, and if you prefer that I schedule it the week  
15 of August 2?

16 MR. KAJON: Your Honor, Mr. Kajon here again. I think  
17 July 29 would be fine. I checked my calendar while you were  
18 figuring out dates, and that gives us six days from the time the  
19 reply is filed, which should be sufficient.

20 THE COURT: Okay. Does that day work for you, Mr.  
21 Moore, and Mr. Pace?

22 MR. MOORE: Your Honor, this is Seth Moore, I'm  
23 available on the 29<sup>th</sup>.

24 THE COURT: Okay. All right. So, I think that's when  
25 we're going to adjourn the motion further to that date. So, the

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1 record should reflect that the revised privilege log with all of  
2 the information that I have requested on the record here would  
3 be filed by July 14. That the Lindberg entities will scour  
4 their records to see if there are additional documents to  
5 produce, and if there are, they will produce them by the 23<sup>rd</sup>.

6 They will also file a reply by July 23, explaining and  
7 responding to all the issues raised in the reply as to the  
8 missing information and why it's not available. And then we  
9 will adjourn this hearing and have a subsequent hearing on July  
10 23 (sic) with respect to the motion after we've all had an  
11 opportunity to look at the privilege log answers, the written  
12 reply, and also to the extent there are additional documents  
13 that have come to light, they'll have been produced. And  
14 presumably, you'll just reflect that in your reply, Mr. Moore,  
15 and Mr. Pace.

16 MR. KAJON: Your Honor, this is Mr. Kajon again. I  
17 think you just said we'll adjourn the hearing to July 23, when  
18 you meant July 29.

19 THE COURT: No, 29<sup>th</sup>, I'm sorry. I'm sorry, July 29.  
20 I just want to clarify.

21 MR. KAJON: I'm sorry, Your Honor, I just an email  
22 from my client that the 29<sup>th</sup> is a bank holiday in Bermuda.

23 THE COURT: Okay. Well, then we're not going to have  
24 the hearing on a bank holiday in Bermuda.

25 MR. KAJON: Can we do --

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1 THE COURT: Go ahead.

2 MR. KAJON: Well, I was going to suggest the 28<sup>th</sup>. I  
3 don't think one day --

4 THE COURT: Does that work for you, Mr. Moore? It's  
5 fine for me.

6 MR. MOORE: Yes, Your Honor, the 28<sup>th</sup> is okay for me.

7 THE COURT: Okay. All right, leave it on the 28<sup>th</sup>  
8 then.

9 MR. KAJON: The only other question I had, Your Honor.  
10 Again, Mr. Kajon here. Are you going to so order the record?  
11 It sounded like that's what you were leading up to. Or do you  
12 want us to submit an order reflecting your rulings?

13 THE COURT: No, I actually did want you to submit an  
14 order. I just was making it clear so that everybody doesn't  
15 leave the hearing not knowing what they're supposed to be doing.  
16 Particularly Mr. Moore. In fact, really mostly for Mr. Moore  
17 and Mr. Pace's benefit because I think just about everything,  
18 I've asked for additionally falls on their heads. They are the  
19 ones that are going to have to amend their privilege log; they  
20 are the ones that will have to get their clients to scour the  
21 files for additional documents, and they are the ones that will  
22 have to prepare a written reply.

23 MR. KAJON: Okay. We will submit an order, Your  
24 Honor.

25 THE COURT: Okay. Thank you.

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1 MR. KAJON: Thank you. We'll see you on July 28.

2 THE COURT: Are there any other issues that anybody  
3 wanted to discuss today about this matter? I just want to make  
4 clear before I adjourn the hearing.

5 (No response.)

6 THE COURT: Okay. If not, I'm going to adjourn the  
7 hearing. And thank you all. I appreciate your arguments. And  
8 Mr. Pace and Mr. Moore, I appreciate you doing this additional  
9 work that would be helpful to explain what needs to happen next  
10 here. Thank you. Have a nice day.

11 ALL COUNSEL: Thank you, Your Honor.

12 THE COURT: Court is adjourned.

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14 CERTIFICATION

15 I, Rochelle V. Grant, approved transcriber, certify  
16 that the foregoing is a correct transcript from the official  
17 electronic sound recording of the proceedings in this matter,  
18 Case 20-12791-lgb, held on 6/24/21.

19 

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22 195 Willoughby Avenue  
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